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| 09/898,754 | 07/03/2001 | William E. Saltzstein | PHYS116783 | 5287 |

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EXAMINER

EVANISKO, GEORGE ROBERT

ART UNIT PAPER NUMBER

3762

DATE MAILED: 04/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/898,754

Applicant(s)

SALTZSTEIN ET AL.

Examiner

George R Evanisko

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-14,21-73,80-85,87-94,96-104 and 106-111 is/are pending in the application.
- 4a) Of the above claim(s) 10-14 and 21-73 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-9,80-85,87-94,96-104 and 106-111 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/10/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

Claims 10-14 and 21-73 were withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 8/4/03.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 3, 7, 80-85, 90-94, 99-104 and 109-111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan et al (5593426). Morgan describes a remote monitoring service (col. 3, lines 35-38, etc), a two way communication network (col. 3, lines 41-44, etc.), a medical device (col. 3, lines 4-30, etc.), wherein the remote monitoring service is configured to send/initiate a communication to the medical device (col. 5, lines 24-25, etc.), having an

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instruction for the medical device to perform and obtain a status assessment (col. 5, lines 5-25, etc.), when not in use (col. 5, lines 9-10), and send a return communication with the status assessment (col. 5, lines 5-25, etc.). But Morgan does not disclose the communication network including a point-of-presence (or web site) on a data network for the remote monitoring service to send the communications/instructions, and/or receive the assessment/data through the point-of-presence and data network (claims 1, 8, 81, 82, 85, 90, 91, 94, 99, 102, 103, 104, 109, and 110), the communication network storing the return assessment/data (claims 83, 92, 100, and 111), and the network sending an email including the assessment/data to the remote device (claims 84 and 93). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the communication system of the medical device as taught by Morgan, with a communication network including a point-of-presence (or web site) on a data network for the remote monitoring service to send the communications/ instructions and/or receive the assessment/data through the point-of-presence and data network, the communication network storing the return assessment/data, and the network sending an email including the assessment/data to the remote device since it was known in the art that communication systems for medical devices use: a communication network including a point-of-presence (or web site) on a data network for the remote monitoring service to send the communications/instructions and/or receive the assessment/data through the point-of-presence and data network to allow both the remote system and the user's medical device to easily and inexpensively receive data over a conventional communications system to allow the operator/physician to remotely access the data; a communication network storing the return assessment/data to allow the physician or operator to view the data anytime it is convenient to the operator so the operator does not have to

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continually examine the data; and the network sending an email including the assessment/data to the remote device so the operator can receive the data from the medical device, determine when data has been sent from the medical device, look at the data when it is convenient to the operator, and can look over the data.

Claims 4, 9, 87, 89, 96, 98, 106, and 108 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan et al. Morgan uses RF signal carriers and cellular telephone links which are a specialized mobile radio network. In addition, Morgan detects movement of a defibrillator operation parameter such as battery voltage.

In the alternative, Morgan discloses the claimed invention except for the network being a specialized mobile radio network and the status assessment being the power supply voltage level. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the defibrillator and base station communication system as taught by Morgan, with the communication system using a specialized mobile radio network and the status assessment being the power supply voltage level since it was known in the art that communication systems use specialized mobile radio networks to provide a conventional communication network that can easily and inexpensively transfer data on existing networks and since it was known that defibrillators take status assessments of the power supply voltage level to allow the operator/physician/technician to know the level of the power supply to determine if the defibrillator will operate correctly or if the power supply needs to be changed.

Claims 5, 6, 8, 88, 97, and 107 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan et al. Morgan discloses that the base communication station may include a computer or a microprocessor controlled device that can include a modem and therefore provides

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the control unit, interface and user interface of the base/remote station. In the alternative, see the rejection below.

Morgan discloses the claimed invention except for the communication network being a two way paging network (claims 5, 88, 97, and 107), a wired digital data network (claim 6), and the remote monitoring service comprising a control unit to initiate communication, an interface to support communication, and a user interface with a display to transfer information between a user and the control unit (claim 8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the defibrillator and base station communication system as taught by Morgan, with the communication network being a two way paging network, a wired digital data network, and the remote monitoring service comprising a control unit to initiate communication, an interface to support communication, and a user interface with a display to transfer information between a user and the control unit since it was known in the art that communications systems use the communication network being a two way paging network (claims 5 and 20) or a wired digital data network (claim 6) to provide a conventional communication network that can easily and inexpensively transfer data on existing networks and since it was known in the art that base/remote stations comprise a control unit to initiate communication, an interface to support communication, and a user interface with a display to transfer information between a user and the control unit to provide an operator friendly device that is easy to operate, that allows the base station to communicate with the medical device, and that allows the operator to control the base station and examine data on the display.

In addition, it would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the defibrillator and base station communication system as

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taught by Morgan with the communication network being a two way paging network or a wired digital data network, because Applicant has not disclosed that the communication network being a two way paging network or a wired digital data network provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with two way communication system using telephone, cellular or RF signal carriers with a point of presence on a data network as taught by Morgan in view of one having ordinary skill in the art, because they provide a two way communication system that uses existing networks to easily and inexpensively transfer data.

Therefore, it would have been an obvious matter of design choice to modify Morgan in view of one having ordinary skill in the art to obtain the invention as specified in the claim(s).

Response to Arguments

Applicant's arguments filed 3/2/05 have been fully considered but they are not persuasive. The arguments that the applicant respectfully disagrees that it would have been obvious to modify Morgan to include a point-of-presence and data network because such features are obvious, that the features of the independent claims do not appear to be well known in the art, and that the examiner has cited no teaching of these features are not persuasive. In the last action dated 12/2/04, the examiner cited seven references showing these features, and their use with medical equipment over two way data networks, to show that it is obvious to one having ordinary skill in the art to include these features. These references are 5857967, 5715823, 5950632, 6144922, 6024699, 6336900, 6141584. In addition, the argument that the examiner has cited no teachings of using a two-way paging system is not persuasive. The examiner cited

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the Reber patent, 5950632, which specifically shows a two-way paging network for use with a medical device for transmitting data for two way communications. In addition, the cited prior art references 5857967 and 6090056 also teach the use of two-way paging systems to transmit data for two way communications. Finally, it is noted that the 103 rejection for the two-way paging system also stated that “because Applicant has not disclosed that the communication network being a two way paging network or a wired digital data network provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant’s invention to perform equally well with two way communication system using telephone, cellular or RF signal carriers with a point of presence on a data network as taught by Morgan in view of one having ordinary skill in the art, because they provide a two way communication system that uses existing networks to easily and inexpensively transfer data”, and the applicant has not overcome that rejection.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,


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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R Evanisko whose telephone number is 571 272 4945. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571 272 4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


George R Evanisko
Primary Examiner
Art Unit 3762

4/10/5

GRE
April 10, 2005